Quality Management for Courts

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QUALITY MANAGEMENT FOR COURTS: TRENDS AND QUESTIONS FOR A REFLECTION BREAK

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1. A new area with some trends

The conference held in Maastricht had very much the character of a trade fair. Some of the best experts on quality management for courts had gathered. They displayed tools for improving quality, which they had often carefully crafted with their own hands. Their reports showed that unlimited patience, wisdom and determination are needed in designing instruments for quality management for courts. Courts consist of judges, and the material judges are made of is notoriously difficult to work with. The brittleness and hardness of diamonds are nothing compared to the independence, individualism and, in some respects, vulnerability of judges.

In some countries, for instance Belgium and England, there was not much time for careful crafting. Change in the court system was overdue and tools for quality management were needed on short order. In other parts of the world, e.g. the United States and Canada, there was more time for craftsmanship and the most refined tools were probably on display at the American and Canadian stalls at the fair. But all stands had their own particular attractions and visiting the fair was an enlightening experience.

It is not easy to give a general impression of a trade fair in concluding remarks. Let me try to identify some trends, or at least to explore the dimensions along which future trends may be measured. In reporting these trends, I will draw especially from the general discussion that took place during the final session of the conference. In this session, statements were discussed that were the conclusions of the six workshops. The statements that were accepted by the final plenary meeting, not in a formal voting procedure but by a show of hands are shown in boxes. Although it may run contrary to the feelings regarding fair procedure of some of the participants, I took the liberty of splitting up some statements when they reflected two or more different messages and of doing some minor editing. The impressions of what was said and thought at the conference are entirely my own, and so are the personal views and remarks I have added.

In this article, I will limit myself to one aspect of quality management: evaluation of performance. There are many other important aspects of quality management, such as the commitment needed for quality control programmes, the prevention of failure instead of correcting it, and rewards for good performance.[2] Another area is that of skills that are crucial to quality management, such as the capability to identify problems and to solve them. Attitudes towards innovation and improvement are crucial, but are excluded here as well.[3] Moreover, there is a

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[2] See, for instance: R.L. Daft, *Management*, 4th edition, Fort Worth: 1995, The Dryden Press, p. 641.

[3] A possible tool to improve these skills is the 'intervision' programme envisaged by the Dutch judiciary, see P. Albers, Supervision of the Judiciary and the Role of the Judge in the Development of Quality Criteria, *Trema* 2001 (this issue), p. ===, and F.C. Lauwaars, F.C.J. van den Doelen and

relationship with what is now often called 'knowledge management': making implicit knowledge about best practices available to others by laying it down in manuals or other carriers of explicit knowledge.[4] These areas were not discussed in depth at the conference, although they were touched upon by many.

In discussing evaluation of performance, I will start with the objectives of evaluation (section 2), and then proceed to the evaluation methods (3) and performance standards (4). In section 5, I will discuss possible next moves in improving quality management for courts (5). Section 6 summarises the main points I want to make.

2. Evaluation of judicial performance: Objectives

Evaluation of performance is an essential element of quality management for courts. Unfortunately, the question 'How are courts doing?' is not a neutral one and immediately raises the next question: 'Who wants to know and why?'

2.1 *Correction of conduct and disciplinary measures*

I described judges as vulnerable. They are indeed. When it is your job to evaluate the conduct of people and to sanction it, you will subconsciously relate any form of performance evaluation to the idea of sanctioning, whatever safeguards have been provided for the evaluation process. This seems to be one of the trickiest problems of evaluating the performance of judges, even when the complication of judicial independence is disregarded for the moment.

In order to tackle this problem, it is essential to keep in mind that evaluation may have many different objectives, which have different impacts on the way judges will respond to it. At the conference some contributors, especially those from Belgium, stressed the necessity of using evaluations for disciplinary measures in extreme cases. Is the recent crisis in the Belgian judiciary behind this judicial openness to being subject to disciplinary sanctions? Is it external pressure or internal conviction that leads to this point of view? The majority of the participants, however, felt that the possibility of correction and imposing disciplinary sanctions should not be a major purpose of evaluating judicial conduct.

2.2 Individual and institutional learning

At least the majority was inclined to believe that the first and foremost objective of evaluation should be learning and development. Evaluation can lead to insight, and insight to improvement: by changing conduct in the direction of existing standards (single-loop learning) or, even better, by questioning and adjusting existing practices and procedures (double-loop learning). Learning can take place individually, but also on the level of the organisation.[5] In order to enable individual judges, other court

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A.Weimar, Professional Quality: The Balance between Judicial Independence and Social Effectiveness, *Trema* 2001 (this issue), p. ===.

[4] An example is the brief but instructive discussion of the Manuals for case management in the US in Donna Stienstra, Trial Court Performance Standards in the United States Courts, *Trema* 2001 (this issue), p. ===.

[5] See the growing literature on (institutional) learning, accessible through Peter Senge, *The Fifth Discipline, the Art and Practice of The Learning Organisation*, New York: Doubleday 1990, and the 'Fieldbooks' that followed (see: www.fieldbook.com) and on the learning of professionals: Donald A.

personnel, and the court organisation to grow, tools for improvement should be made available, like monitoring, coaching, and a programme of courses.

1. Every judge periodically needs to receive feedback about his/her job performance on the basis of a set of well-defined criteria, in order to enhance his/her performance. This monitoring procedure needs to be combined with measures and means that enable the judge to improve his/her weak points.

Most participants felt evaluation for learning purposes should be separated from the assessment for disciplinary purposes. Rightly so, because this separation will build the trust necessary for evaluations that contribute to learning and the development of new and better practices.

In practice, however, it will be hard to prevent that some information from the learning-oriented evaluation leaks to evaluators with other objectives, such as superiors who have to decide about a judge's career steps and, in extreme cases, about disciplinary measures. The main safeguard here seems to be a culture where there is appreciation for people's strong points and where there is acceptance of their weaknesses as long they are working on overcoming them. In my experience, such a culture has to be cultivated carefully, especially in an environment where many lawyers work, with their natural inclination to look for fault and to point out shortcomings. Lawyers have to be constantly reminded that other people have at least some strong points and much potential.

2.3 External accountability

In his speech at the conference Dutch State Secretary Cohen connected evaluation to external accountability.[6] Of course, the Ministry of Justice and Parliament have a right to know what courts give in return for the millions the state spends on the judiciary. One way to achieve this is external inspection, as conducted in the Dutch school and health care systems. However, inspection is hard to reconcile with the ideas regarding judicial independence prevalent in courts.

Even soft types of external accountability, like the visitation procedures used in assessing the quality of Dutch university research and education programmes, did not meet much enthusiasm at the conference. They would still feel like an intrusion. There may be something in this idea after all, when the visitation procedure is set up as external monitoring of a mainly internal evaluation process. The initiative for the setting of performance indicators can be left to the courts and even the evaluation against these standards. The role of the external 'evaluator' can be just to look and listen how the courts assess themselves. The outsider who evaluates may speculate that courts will start inviting comments and suggestions when the necessary trust has been built. The conference, however, prefers internal evaluation, of which the results should be made public by the judiciary, and passive monitoring by outsiders.

Schön, *The Reflective Practitioner: How Professionals Think in Action*, New York: Basic Books 1984 and Donald A. Schön, *Educating the Reflective Practitioner*, San Francisco: Jossey-Bass 1990.

[6] M.J. Cohen, *Normeren en stimuleren van de kwaliteit van rechtspraak*, Trema 2001 (this issue), p. ===

2. The Judicial Council should strive for maximal openness in relation to performance of courts. This will alleviate the need for a special 'inspectorate' for the judiciary.

2.4 The press as intermediary

The press is an essential intermediary for external accountability. At the conference the discussion focused on admitting television cameras to courtrooms. This may seem a specific issue, but it reflects many of the more general problems of external accountability: selective reporting, a bias towards events that arouse the interest of the general public, underreporting of general trends and little interest in positive feedback. According to the participants, the policy with respect to televising of court proceedings should be: 'Yes, in principle'.

3. Television cameras are to be admitted into courtrooms under national conditions, agreed upon by the press, subject to exceptions in individual cases to be decided on by courts.

However, many problems remain. Court proceedings are very difficult to cover, said Dale Poel, professor at the School of Public Adminstration (Dalhousie University) Halifax, 'because watching them is like watching grass growing. If in all that grass suddenly a weed pops up, that is what will get all the attention'. The reporting of the proceedings will concentrate on events that can be pictured in a few seconds and these incidents may not be characteristic of the proceedings. This is not a problem that is typical of the reporting of court proceedings. The press covering of parliamentary sessions suffers from a similar bias. However, there all the participants are free to comment on the selection of information that is offered to the general public, whereas judges are probably restricted in this respect.

Willem Breedveld, a commentator at the Dutch newspaper Trouw who teaches Politics and Masscommunication at Leiden University, has invited the press and the judiciary to see each other as allies in serving a common cause: the public interest. He may be right, but not all the interests of the judiciary and the press will be perfectly in line with the public interest. Judges and journalists have their own agendas. Some of them may wish to be seen as real decision-makers or as successful news creators. The possibility of co-operation therefore will not reduce the need for caution.

Breedveld has also stressed the importance of the court decision as a tool of communication between judiciary and general public. The view that judgements should not use technical or archaic language was generally approved. We will wait and see.

3. How to evaluate

The organisation of evaluation processes is complicated. The preceding articles in this issue of Trema show the many intricacies involved. During the plenary meeting, only some more general aspects could be discussed.

3.1 Individual versus collective accountability

In the United States, data about the dockets of individual federal judges are published on the Internet. There you can find how many cases he or she has dealt with last year,

how many cases in his or her file cabinet remain undecided and how he/she is doing compared to fellow judges. At a conference held in North Western Europe, you would expect people to frown on such manifestations of American individualism and individual accountability. Indeed they did raise their eyebrows, as the following statement shows.

4. Openness as to performance should not go as far as publishing data that refer to the performance of individual judges

Most felt that publication of individual performance would be too hard on some judges who would not be meeting the standards, because of personal circumstances that should not be reported to the general public.

These cultural preferences are important, but choosing for individual or collective accountability has its consequences. Both lead to different incentives with regard to working in teams, striving for personal excellence, and responding evasively in case of individual malfunctioning, to name a few.

3.2 Internal versus external feedback

Who is invited to give the judges feedback? Feeling safe is a necessary precondition of effective feedback. In declining order of 'safety for the subject', self-assessment is an obvious first, probably followed by feedback by lawyers who deal with the judge, by peers, by more senior or junior judges, by 'customers' appearing before the judge, by external 'inspectors', and by the press. The very sophisticated system used in Nova Scotia, described by Dale Poel, stayed on the safe side and went as far as a combination of self-assessment and anonymous feedback by lawyers.[7]

A reason to expand the range of 'feedbacks' is that leaving the assessment of performance to fellow law professionals will probably lead to appraisals that emphasise the legal skills of the judge, and underrate other important aspects such as showing empathy, using active listening skills, and managing the court hearing. Maybe that is why the conference went a bit further and recommended that fellow judges and client groups should be included in the assessment procedure.

5. Feedback can be based on information from colleagues as well as selected client groups.

3.3 An ombudsman for the judiciary

To the surprise of some, there was hardly any objection against establishing an ombudsman for the judiciary. Such an institution exists in the home country of the ombudsman, Sweden, and the person now holding that position was present at the conference, reassuring the participants.

6. An Ombudsman for the Judiciary and a local complaints regulation can contribute to the better functioning of courts and judges.

[7] Dale Poel, Measuring Judicial Performance: Lessons from the Nova Scotia (Canada) Judicial Development Project, *Trema* 2001 (this isssue), p. ==.

Whether the ombudsman should be a former judge or an outsider, and whether there should be a minimum age requirement are still matters for discussion.

Even more difficult is the extent of the control to be performed by the ombudsman. Many decisions of judges relate to procedural matters. Should they be subject to appeal, to review by the ombudsman, or to both? The general feeling was that courts need some discretion to deal with procedural matters, so that review by the ombudsman on procedural matters having to do with the quality and speed of a trial would be limited to extreme and obvious cases. In the end, the conference agreed on the following statement.

7. Complaints to the Ombudsman can be made regarding procedural and behavioural matters, but not regarding the content of decisions made by judges

3.4 Relation with other evaluation mechanisms: The appeal system

The relationship with the appeal system is probably behind this limitation. The first thought that will come up in a legally trained mind is that the review of court decisions should be left to the courts of appeal. From the perspective of stimulating the quality of judgements, however, this may be different. An appeal system's main objective is correction of legal and factual errors. The development of new law comes second. Appeal probably also has some educational merit, but as a learning tool, it has limited value. The feedback is not given immediately, but months or even years later. The feedback is limited to what the appeal court finds necessary to substantiate the need for correction. Consequently, there is hardly any positive feedback (which is essential to learning) and no follow-up in the sense of coaching or educational measures.

The appeal system is also rather limited in scope. It only evaluates decisions. Decisions are but part of the output of the court system, especially in private law cases, where settlements are another important output category. Monitoring the quality of the output is just one of the ways quality can be controlled. Evaluation of court practices and procedures, of the processes that lead to the output, is equally important.

Moreover, the appeal system is usually a restricted type of evaluation. It is a single-loop learning system, because the standards of evaluation are set beforehand by lawmaking bodies. Courts, for instance, cannot challenge rules of procedure in most systems. Only constitutional review may allow for some double-loop learning (questioning existing practices and procedures), but this type of review is usually limited in practice to exceptional cases. Learning about normal and standard cases is not stimulated by constitutional review.

Furthermore, the criteria are often designed and/or applied in such a manner that only the most apparent and serious mistakes are filtered out. An appeal system is usually far too costly to use it for minor improvements or for learning purposes, as regards both the courts and the parties. Summarising, appeal is of limited value as a means of improving quality.

4. What to evaluate

4.1 Give us the criteria!

What performance standards are to be used? In the Nova Scotia project, legal ability, judicial management skills, impartiality, disposition practices, and comportment were evaluated.[8] In the US caseload numbers and disposition times are measured.[9] Are these really the secret key variables that identify a high quality court? Part of the audience had expected to hear more about this. Maybe the following statement, endorsed by the conference and inspired by the contribution of Prof. Blankenburg of the University of Amsterdam,[10] was a disappointment for those participants:

> 8. Performance indicators related to the quality of proceedings will reflect different, often contradictory, expectations about the judicial procedure. Therefore, a maximum score on each indicator cannot be expected, only an optimisation of the scores on the different indicators.

This statement is somewhat worrying, because it can be understood as an invitation to honour everybody's wishes. This could lead to a long list of performance indicators, from the way the telephone is answered, or the accessibility of courts by public transport, to the way the judge hears the parties and their lawyers, or the transparency of the judgement. Alternatively, when contradiction is accepted as inevitable, we may end up with a limited set of indicators which refer to items that are easy to measure, like case disposition times, but which give an equally limited picture of the quality of courts. One of the current challenges is developing sets of indicators that reflect all relevant aspects of quality, without a bias towards what is easy to measure.[11]

4.2 Who sets the standards?

Another issue is who should be responsible for identifying performance criteria. In line with the preference for evaluation inside the court system discussed in section 2.3, the Raad voor de Rechtspraak and similar foreign Councils for the Judiciary are obvious candidates. It is still uncertain, however, whether these organisations will mainly manage the judiciary on behalf of the courts, or mainly control the courts on behalf of the outside world, represented by the Ministry of Justice. This uncertainty may explain the general feeling that the Council for the Judiciary should facilitate and encourage initiatives from the judiciary, rather than take the initiative itself.

The discussion emphasised the promotion of uniformity in the application of the law. The primary tool to achieve equality would be to let the judiciary set rules, as the following statement shows.

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[8] Dale Poel, Measuring Judicial Performance: Lessons from the Nova Scotia (Canada) Judicial Development Project, *Trema* 2001 (this isssue), p. ==.

[9] Donna Stienstra, Trial Court Performance Standards in the United States Courts, *Trema* 2001 (this issue), p. ===.

[10] Erhard Blankenburg, Measuring the Legitimacy of Judicial Procedure (Legitimation durch Verfahren), *Trema* 2001 (this issue).

[11] See, for instance, R.S. Kaplan & D.P. Norton, *The Balanced Scorecard*, Cambridge (Mass.): Harvard Business School Press 1996 and in the context of courts Jean Paul Jean, Justice. Quels modes d' administration et d'évaluation pour un service public complexe qui doit rendre des décisions en toute indépendence? in: Marco Fabri and Philip M. Langbroek (eds.), *The Challenge of Change for Judicial Systems*, Amsterdam 2000: IOS Press, p. 56.

9. The Council for the Judiciary should promote uniform application of the law by facilitating and encouraging initiatives from the judiciary itself. The authority to set rules to achieve this should be conferred upon the judiciary by legislation, and rules originating from these initiatives should be made public.

The conference could not agree on the extent of the said authority to promote uniform application. Is the judiciary only to set rules on 'technical matters', such as time schedules for proceedings, or on a more extensive range of procedural matters and issues of substantive law?

Here again, we encounter the view that new procedures should not interfere with existing ones: ombudsman review and judicial rule-making should not interfere with the appeal system and legislation, respectively. Judges like orderly systems, accustomed as they are to annoying jurisdiction problems. From a perspective of quality management, however, it seems less harmful to have overlapping (or even competing) systems that give feedback or produce performance criteria. These systems should not produce contradictory indications, but it might be advantageous to let two systems look at similar problems from different angles.

4.3 The area for which courts assume (some shared) responsibility

An interesting feature of the court reform movement, under way in England, Belgium, and Holland is that courts gradually take more responsibility. Traditionally, judges feel primarily responsible for making fair and legally sound decisions on the issues presented to them at the time such a decision is called for (or at least within reasonable time thereafter). The focus of attention is widening, however. Courts all over the world increasingly see themselves as case managers, responsible for fair and 'expeditious' proceedings (the characteristic term used in this respect, presumably because less puzzling synonyms like 'quick' or 'fast' are difficult to link with traditional court proceedings). In private law matters, judges start to see facilitating fair settlement negotiations as a major part of their job. In criminal cases, courts begin to be more responsive to the justified needs of victims. The following statement reflects where we currently are in this gradual extension of the range of court activities.

10. The judge determines the way in which a case is dealt with, allowing the parties involved their say in the matter. The judge, however, decides and can be held accountable for his/her decision. This accountability also relates to the integral management of the case in co-operation with the (administrative) staff.

Further changes may lie ahead. In private law cases, a probable next step is that courts will start to feel some responsibility for the content of settlements or of mediated outcomes.

Taking up responsibility beyond the content of judgements also leads to assuming responsibility for the acts of other individuals. The statement shows that judges no longer mind to be answerable for the performance of the administrative staff. However, the involvement of other persons does not stop at the walls of the court building. The quality of court proceedings, for instance, depends on the

'assistance' the court gets from the lawyers involved.[12] This has consequences for quality management in general and evaluation against performance standards in particular. Where responsibility is shared with others, attributing the quality of outcomes to one of the partners will be a logical step for a legally trained mind, but this can easily lead to ineffective blaming or fear of being blamed. Perhaps the more promising course is to evaluate processes rather than output.

5. Quality management for courts: questions for a reflection-break

Where do we stand now, after visiting this trade fair of tools and ideas, and examining various trends? Are we on track with quality management for courts and should we just continue pursuing our tasks with unlimited patience, wisdom, and determination again, or is it time for another reflection break? I personally found it disturbing that we did not make much progress in identifying concrete performance criteria. The reasons behind this will have to be explored.

5.1 The relationship between quality management, mission and strategy

A possible but not less disturbing answer is that we do not know enough about what the court system wishes to achieve. This may sound strange. Everybody knows what courts are for. This is, however, the kind of trust in long standing organisations that has proved to be illusory in many such places. Listen to the confusion, signalled by statement no. 9, endorsed by the conference, referring to 'conflicting expectations'. This is not a qualification associated with an organisation that knows where it is going and why. Indeed, the expectations of what a court system should achieve are very different. Some people see courts primarily as tools for enforcing legal rules. Others stress the purpose of deciding disputes about legal claims. Or they take the interests of the citizens as their starting point, but arrive at the very different aim of solving the real disputes that people have. Still others believe courts have an important function in keeping the law up to date as regards the needs of society. Or they think an essential task of courts is to educate people. Maybe the problem is even that most lawyers do not see the court system in terms of means to accomplish higher order purposes, but as an institution the preservation of which has become a goal in itself.

Conceivably, the judiciary will have to live with these contradictions, at least with some of them. On the other hand, it might be possible to agree on a mission for the court system, or for components of it, which at least solves some of the apparent discrepancies. The English reformers have set an example by clearly stating the 'overriding objective' of the new Civil Procedure Rules in Rule 1: 'to deal with cases justly'. It is interesting to note how this is worked out in detail. Dealing with cases justly means in so far as is practicable: (a) ensuring that the parties are on an equal footing; (b) saving expense; (c) dealing with the case in ways which are proportionate to the amount of money involved, to the importance of the case, to the complexity of the issues, and to the financial position of each party; (d) ensuring that it is dealt with expeditiously and fairly; and (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. This mission permeates the whole set of rules, and is meant to govern its application.[13]

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[12] Compare: F.C. Lauwaars, F.C.J. van den Doelen, and A.Weimar, Professional Quality: The Balance between Judicial Independence and Social Effectiveness, *Trema* 2001 (this issue), p. ===.

[13] See Rule 1 of the Civil Procedure Rules.

Similar missions might be developed for other court systems. They will probably vary across legal cultures and across areas of law. US criminal and French administrative court systems will have different missions and different strategies to pursue these missions.

In the literature about quality management, a close link is posited between issues of strategy and quality programmes. And rightly so: when it is not clear what you want to achieve, measuring how far you got makes little sense and might even be dangerous. One of the reasons we are now discussing quality systems for courts is dissatisfaction with the court system. Starting to measure on the basis of criteria that reflect the current way courts work, may reinforce the weaknesses of the system, instead of leading to improvement.

A mission like the one discussed may sound too general and vague, but goals like 'saving expense', 'proportionate dealing with cases', and 'appropriate sharing of court resources' can, with some effort, be translated into concrete performance standards. The last item can, for instance, be related to the time slots allotted to court hearings. In some Dutch courts, there are still discrepancies in this respect, that become immediately apparent when such a criterion is applied. Cases about money claims of EUR 10.000 may get one or two hours, whereas complicated and much more important divorce proceedings will have to be dealt with in 20 minutes.

5.2 Developing an 'overriding objective' for court systems

Formulating an overriding objective, a mission for the court system that can be translated into a more concrete strategy reflected in performance standards, will not be easy in some jurisdictions. Both the judiciary and the responsible government officials might be hesitant to contribute to such a process. The judiciary may be reluctant to do more than construing its mission from the constitutional and other legal documents that pertain to it. Many people still try to derive quality standards from due process rules like Article 6 of the European Human Rights Convention. However, minimum standards, designed to be enforced in the appeal system of every European jurisdiction from England to Turkey, lack the aspiration that should be part of a quality programme.

Moreover, both judiciary and government may be afraid to touch upon judicial independence. Is it a coincidence that the primary Dutch government document relating to court reform is called *Contourennota*, suggesting that the executive and legislative powers can only contribute to the process of court reform by sketching the outer limits? Thus implying that they will say nothing about the core of the business of courts? In the document itself, the careful politicians went a bit further in stating that tailor-made justice, cutting disposition times, accessibility by modern information technology, and a better orientation on the outside world are to be objectives for the reform. The judiciary itself, in its main change-programme, *PVRO*, has set as its principal object to improve the service of the judiciary to society by becoming more responsive to outside signals. This client orientation is important, but it says little as yet about the kind of service the clients will get, especially when courts see this service as determined primarily by the legal powers conferred upon them by the law of civil, criminal, and administrative procedure.

5.3 Translating mission into strategy and performance standards: an internal or an external framework?

When the purposes of the system have been clarified, at least to some extent, it may become easier to define what quality is. Then there is still a choice to be made. The

managers of courts may be inclined to link the preferred mission or strategy to quality standards and evaluation procedures that are already available in other court systems. This is a good approach, and this conference has showed that it leads to much valuable information. This comparative approach has the convenience that it selects evaluation procedures and standards, already tested for their acceptability in court systems.

This approach, however, has the inherent danger that existing weaknesses are overlooked or even reinforced. In the above sections, I hinted at some of the inherent biases in legal thinking and in the court system that may have consequences for the way performance standards are now treated. There could be a bias towards correction instead of learning as an objective of the evaluation. A tendency might exist to rely on an existing appeal system, which is probably a poor tool for quality management. Lawyers might centre on formulating rules, instead of making best practices explicit as benchmarks for evaluation. They will probably focus on legal aspects of quality and tend to underestimate the relevance of other skills. There might be a vacuum, because both government and judiciary are hesitant to take the initiative in formulating standards.

These are probably among the reasons why the experts on quality management for courts also seek inspiration from general theories and practices of quality management.[14] It is sensible to test the standards obtained from the comparative approach, which still reflect standards 'internal' to court systems, against an 'external' perspective.

An example of such an external framework, already brought to the attention of the experts, is the 'balanced scorecard' approach.[15] Elements that could be drawn from this approach are, for instance, the idea to differentiate into four equally important perspectives: financial, customer, internal procedures, and learning/growth. The financial perspective will meet with much initial resistance, but it cannot be disregarded in times when complex measurement systems determine the financial resources of a court. Suggested indicators for the customer perspective are market share, acquisition processes, customer loyalty, customer satisfaction, profits per customer, differentiation to individual preferences, customer relations, and image/reputation. Many of these indicators seem irrelevant for courts, but an attempt to translate them into other standards that are applicable to courts can be enlightening. Courts seem to lose 'market share' to other procedures, e.g. settlement negotiations, arbitration, and mediation. Do they react by making their 'decision' service more attractive, so that they may see their market share rise again? Or do they enter the market of alternative procedures? Is increasing market share an appropriate goal for courts? Maybe the contrary, but how can you prevent your market share from rising when you really improve the quality of your services?

Internal procedures include all the processes from identifying the needs and wishes of the customers, via innovation of services, through production processes, towards after-sales services. When courts truly want to be become more customer-oriented, they will have to give attention to all these elements. It might, therefore, be a good idea to find a way to measure or otherwise evaluate the innovative potential of

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[14] F.C. Lauwaars, F.C.J. van den Doelen, and A.Weimar, Professional Quality: The Balance between Judicial Independence and Social Effectiveness, *Trema* 2001 (this issue), p. ===, referring to the framework of the European Foundation of Quality Management, see http://www.efqm.org/imodel/modelintro.htm .

[15] R.S. Kaplan & D.P. Norton, *The Balanced Scorecard*, Cambridge (Mass.): Harvard Business School Press 1996.

courts. And, to reassure the readers for whom this is much too theoretical, there is also much attention for indicators of more familiar things like disposition times. What to think, for instance, of using the ratio between the time that a case is worked on by somebody and the total time the process takes as an indicator for court performance? Ideally, waiting time should be reduced to zero and the ratio should be 1. This is a refinement of using disposition time as such as an indicator, because it reflects the difficulty of the case. Improving this ratio from the current 0.01 or lower to something like 0.1 would be a big, but probably feasible, achievement. Even learning and growth can be measured, although often only indirectly, by using data about employee satisfaction and productivity, by looking at the availability of explicit knowledge or by taking into account the amount of interaction between employees.

6. The next step: Towards quality management of the core business of courts

Not very realistic, this playing with unusual ideas? Maybe, but to my mind, much of what has been discussed above comes down to one fundamental issue, intimately related to playing with ideas.

There is a danger that the discussion of quality delivered by courts will stay superficial. Some lawyers involved will tend to see the court system as something given, rather than as an institution that, like any institution in the present era, has to reinvent itself. There are many ideas and attitudes prevailing in the court system that restrict the extent to which quality is considered to be manageable. We discussed the uncertainty about the mission of the courts, the customary relationship between courts and lawmakers, and the idea that judges operate inside a fixed system of rules of legal procedure. We encountered attitudes with respect to judicial independence, difficulties with distinguishing evaluation for correction and learning purposes and the unjustified reliance on the appeal system as part of a quality management system. These restrictions may lead to the situation where much of the core business of courts, for instance the process of dealing with disputes, stays outside the scope of quality management.

That would be a pity. When the core business of the courts is not included in quality management projects, improvement is still possible, but the general public will not be satisfied with improvement in the way people are treated in court hearings or in the way telephone calls are answered. These are elements of the services rendered by courts, but not the key elements. The next step in the development of quality management systems for courts should be a step closer to their core business by discussing the essence of the services courts render and by finding performance indicators that directly relate to these essentials. There are many signs that this is the direction we will take, like the formulation of a key purpose in the process of the English reform of civil procedure and the gradual extension of the scope of the responsibility judges assume. Constraints will be everywhere, and some will have to be removed with the help of others. But at least there should be no restrictions to our reasoning about quality. General theories about quality management can inspire us, and they can also help us to overcome some of the restrictions to our thinking, especially the ones that reside in the legal mind.